

Remarks

Applicant respectfully traverses the § 103(a) rejection presented in the instant Office Action because the ‘503 reference does not qualify as prior art under § 103(a) as is discussed in detail below. Thus, the finality of the instant Office Action is improper and must be withdrawn.

The final Office Action dated April 1, 2009 indicated that claims 1-17 stand rejected under 35 U.S.C. § 103(a) over Soloff (U.S. Patent No. 6,889,384) in view of Agnihotri (US Patent Pub. 2003/0065503). Applicant traverses all of the rejections and, unless explicitly stated by the Applicant, does not acquiesce to any objection, rejection or averment made in the Office Action.

The § 103(a) rejection of claim 1-17 is improper because the ‘503 reference does not qualify as prior art under § 103(a). Specifically, Applicant hereby invokes § 103(c) and alleges that the subject matter of the claimed invention and of the cited ‘503 reference “were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” According to M.P.E.P. § 706.02, the rejection under 35 U.S.C. § 103(a) should be withdrawn because “(s)ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” This portion of the M.P.E.P. goes on to state that such subject matter which was prior art under former 35 U.S.C. § 103 via 35 U.S.C. § 102(e) is now disqualified as prior art against the claimed invention.

The ‘503 reference appears to have been first published on April 3, 2003, and the instant application is entitled to priority dates of at least February 12, 2003 (via PCT/IB03/00542) and March 11, 2002 (via EP 02076001.3). Thus, Applicant assumes that the ‘503 reference has been asserted as prior art under § 102(e). The ‘503 reference and the instant application to Van Agt *et al.* were at all relevant times assigned to, or subject to an obligation of assignment to, Koninklijke Philips Electronics N.V., as is evidenced by the assignment for the ‘503 reference recorded at Reel/Frame 012225/0875, and the assignment for the instant application recorded at Reel/Frame 016505/0449.

Therefore, Applicant submits that the '503 reference does not qualify as prior art by way of § 102(e) and § 103(c). Accordingly, the § 103(a) rejection of claims 1-17 is improper and must be withdrawn.

Applicant also traverses the § 103(a) rejection of claims 1-17 because the primary '384 reference does not teach or suggest aspects of the claimed invention as asserted by the Examiner, as was previously discussed in detail in the Response dated December 16, 2008 (hereby incorporated by reference in its entirety). However, since the § 103(a) rejection necessarily fails because the '503 reference does not qualify as prior art under § 103(a), further discussion about the lack of correspondence with regard to the '384 reference is unnecessary at this time. Accordingly, the § 103(a) rejection of claims 1-17 is improper and Applicant requests that it be withdrawn.

In view of the above, Applicant believes that each of the rejections/objections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, David Cordeiro, of NXP Corporation at (408) 474-9068.

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